MISSOURI COURT OF APPEALS WESTERN DISTRICT

DERICK MILLER

APPELLANT,

v. STATE OF MISSOURI

RESPONDENT.

DOCKET NUMBER WD74785

DATE: November 27, 2012

Appeal From:

Harrison County Circuit Court The Honorable Jack N. Peace, Judge

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Attorneys:

Mark A. Grothoff, Columbia, MO, for appellant.

Daniel N. McPherson, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DERICK MILLER,

APPELLANT,

v. STATE OF MISSOURI,

RESPONDENT.

No. WD74785 Harrison County

Before Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Derick Miller appeals the denial of his Rule 29.15 post-conviction relief motion after an evidentiary hearing. Miller filed an uncontested motion to remand arguing that this case must be remanded to determine the timeliness of his original *pro se* post-conviction relief motion.

Reversed, vacated and remanded.

Division Three holds:

- (1) The motion court is required to enforce mandatory time limits associated with post-conviction relief and a movant's non-compliance cannot be waived by the State.
- (2) Although Miller's post-conviction relief motion was filed after the date required by Rule 29.15, Miller alleged facts explaining the delinquent filing which if proved by a preponderance of the evidence might fall within a recognized exception to the time limits for filing post-conviction motions. Thus, the motion court is required to determine whether Miller's delinquently filed *pro se* post-conviction relief motion falls within a recognized exception to the mandatory time limits.

Opinion by Cynthia L. Martin, Judge

November 27, 2012

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